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Attorneys for LISA NOVAK and PATRICK NOVAK

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LISA NOVAK and PATRICK NOVAK, as the
heirs and representatives of the decedent, Michael
Robert Novak,

Plaintiffs,

v.

CITY OF MADERA, a municipal entity of the
State of California, KAYLA CLARK, DORIAN
LASSO, ROBERT MAHONEY, and ANTHONY
MARTINEZ, and DOES 1 through 10, inclusive,

Defendants.

Case No.: 1:20-cv-00301-DAD-SKO

**STIPULATION AND ORDER
ALLOWING PLAINTIFFS TO FILE
FIRST AMENDED COMPLAINT
FOR DAMAGES**

(Doc. 20)

STIPULATION

Pursuant to Federal Rule of Civil Procedure 15(a)(2), plaintiffs Lisa Novak and Patrick Novak (“Plaintiffs”) and defendants Madera, Kayla Clark, Dorian Lasso, Robert Mahoney, and Anthony Martinez (“Defendants”) stipulate as follows:

1. Plaintiffs filed their complaint against Defendants on February 25, 2020 alleging a total of five federal and state claims as wrongful death claimants.

2. Plaintiffs seek to amend their complaint to substitute survival claims for their federal

Stipulation and Order Allowing Plaintiffs to File First Amended Complaint

1 wrongful death claims and to add pendant state law survival claims in their capacities as successors in
2 interest to their deceased brother Michael Robert Novak's claims. Plaintiffs have good cause for the
3 amendment because, since their complaint was filed, the Ninth Circuit issued a decision that suggests
4 siblings cannot maintain their own 42 U.S.C. § 1983 claims as wrongful death claimants. *J.P. v. Cty*
5 *of Alameda (J.P.)*, 803 Fed. App'x 106, 109 (9th Cir. 2020). The Ninth Circuit's decision in *J.P.*
6 appears to call into question Plaintiffs' 42 U.S.C. § 1983 claims as filed. Plaintiffs seek to amend their
7 complaint to proceed as their deceased brother Michael's successors in interest to bring 42 U.S.C. §
8 1983 survival claims for federal constitutional violations, as well as pendant state law survival claims.

9 3. A copy of the proposed First Amended Complaint is attached as **Exhibit A**. A copy of
10 Plaintiffs' Successor in Interest Declaration pursuant to California Code of Civil Procedure § 377.32 is
11 attached as **Exhibit B**.

12 4. Good cause for the amendment exists given the legal theories on which Plaintiffs may
13 proceed, and given that Defendants will suffer no prejudice because the named parties and factual
14 allegations of the First Amended Complaint remain the same and the facts to be ascertained in
15 discovery are largely the same; it is the legal theories that will be altered and supplemented by the
16 amendment. Moreover, to date, no formal written discovery and no depositions have yet taken place.
17 This amendment also is not the product of undue delay, proposed in bad faith, or futile.

18 5. Filing and service on all parties of the First Amended Complaint for Damages and the
19 Successor in Interest Declaration should be deemed complete as of the date the Court's signed order is
20 transmitted via the CM/ECF system. Defendants' responsive pleadings should be due thirty (30) days
21 after the First Amended Complaint is deemed filed and served.

22 It is so stipulated.

23
24 Dated: March 18, 2020

EMANUEL LAW GROUP

25 By: /s/ Todd P. Emanuel
26 Todd P. Emanuel
27 Attorney for Plaintiffs
LISA NOVAK and PATRICK NOVAK

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Stipulation and Order Allowing Plaintiffs to File First Amended Complaint

1 Dated: March 18, 2020

ALLEN, GLAESSNER, HAZELWOOD & WERTH

2
3 By: /s/ Patrick Moriarty (authorized on 3/18/21)

Patrick Moriarty

Attorney for Defendants

4 MADERA, KAYLA CLARK, DORIAN LASSO,
5 ROBERT MAHONEY, and ANTHONY MARTINEZ

6
7 **ORDER**

8 Although the Court approves the parties' stipulation as it relates to the filing of Plaintiffs' First
9 Amended Complaint (Doc. 20), for purposes of docket management, the operative pleadings must be
10 filed on the docket separately. Thus, Plaintiffs must **file** their First Amended Complaint – the Court
11 will not deem it filed.

12 IT IS HEREBY ORDERED that Plaintiffs Lisa Novak and Patrick Novak are granted leave to
13 file their First Amended Complaint for Damages, a copy of which is attached to the stipulation as
14 Exhibit A, and their Successors in Interest Declaration, a copy of which is attached to the stipulation as
15 Exhibit B;

16 IT IS FURTHER ORDERED that, **within two (2) days from the date of this order, Plaintiffs**
17 **shall file** the First Amended Complaint for Damages and the Successor in Interest Declaration; and

18 IT IS FURTHER ORDERED that all Defendants' responsive pleadings are due thirty (30) days
19 after the First Amended Complaint for Damages and the Successor in Interest Declaration are filed and
20 served.

21
22 IT IS SO ORDERED.

23 Dated: **March 24, 2021**

/s/ Sheila K. Oberto

24 UNITED STATES MAGISTRATE JUDGE